



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R01-OAR-2018-0069; FRL-9979-29-Region 1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants;

New Hampshire; Delegation of Authority

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing its action to codify into the Code of Federal Regulations (CFR) the delegation of authority to implement and enforce the Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or before October 14, 2010 (SSI Federal Plan) to the New Hampshire Department of Environmental Services (NH DES). The SSI Federal Plan addresses the implementation and enforcement of the emission guidelines applicable to existing SSI units located in areas not covered by an approved and currently effective state plan. The SSI Federal Plan imposes emission limits and other control requirements for existing affected SSI facilities which will reduce designated pollutants. This action is being taken under the Clean Air Act (CAA).

DATES: This rule is effective on **[Insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2018-0069. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not

placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Patrick Bird, Air Permits, Toxic, & Indoor Programs Unit, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square – Suite 100, Mail Code: OEP05-2, Boston, MA, 02109-3912, tel. (617) 918-1287, email bird.patrick@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

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I. What Action is the EPA Taking Today?

The EPA is finalizing through codification of regulatory text in 40 CFR part 62, subpart EE the delegation of authority to implement and enforce the SSI Federal Plan to the NH DES. A Memorandum of Agreement (MoA), which became effective on December 22, 2017, serves as the transfer mechanism for the implementation and enforcement authority to NH DES.

However, nothing in this action, nor in the MoA, shall be construed to prohibit the EPA from enforcing the SSI Federal Plan.

II. What Was Submitted by the NH DES and How Did the EPA Respond?

On November 14, 2017, the NH DES submitted to the EPA a request for delegation of authority from the EPA to implement and enforce the SSI Federal Plan. The EPA prepared the MoA that defined the policies, responsibilities, and procedures by which the SSI Federal Plan would be administered by both the NH DES and the EPA, pursuant to 40 CFR part 62, subpart LLL for SSI units. Condition I.E. of the MoA states, “The delegation of the Federal Plan to New Hampshire shall become effective upon authorized signature of both the NH DES and the EPA.”¹ On December 18, 2017, Mr. Robert R. Scott, Commissioner of NH DES signed the MoA, and on December 22, 2017, Mr. Ken Moraff, as Acting Regional Administrator of EPA Region 1 signed the MoA. The MoA became effective upon signature by Mr. Ken Moraff on December 22, 2017.

III. What Comments Were Received in Response to the EPA's Proposed Action?

The EPA published a proposed rulemaking concerning this action on March 16, 2018. *See* 83 FR 11652. In response to the EPA's March 16, 2018 proposed rulemaking action, we received a number of anonymous comments on the proposed action that were not germane to the proposal and/or did not specify what changes should be made to the NH DES delegation of the SSI Federal Plan. Many of the comments identified and pertained to issues that are outside the scope of, and do not reference, the proposed action. Therefore, EPA will not provide any further specific responses to these comments.

¹ See the Memorandum of Agreement Between New Hampshire Department of Environmental Services and The United States Environmental Protection Agency, Region 1 Sewage Sludge Incinerators Federal Plan Delegation. The reader may refer to it in the docket for this rulemaking at www.regulations.gov (see Docket ID Number EPA-R01-OAR-2018-0069).

EPA did however receive one comment which could be construed to refer to the proposed rulemaking for the NH DES SSI Federal Plan delegation.

Comment: A single anonymous comment, much of which included information that was not germane to EPA's proposed rulemaking for the NH DES SSI Federal Plan delegation, also stated that "The Rule created potentially unduly burdensome requirements [sic] Given the extremely limited pollutant loadings and relative high costs, according to EPA's own analysis, these requirements appear to be ripe for substantial reduction or elimination. this [sic] entire subcategory would be excluded by rule given the de minimis amount of pollution."

Response: If "The Rule" in the submitted comment refers to EPA's March 16, 2018 (83 FR 11652) proposed rulemaking, EPA disagrees with the comment because this action merely codifies the delegation of an existing Federal requirement to the State and does not impose additional requirements beyond those imposed by existing Federal regulations.

IV. What is the EPA's Conclusion?

For the reasons described above and in EPA's proposal, the EPA is finalizing its action to codify into the CFR the delegation of authority to implement and enforce the SSI Federal Plan to NH DES. EPA will codify the delegation and reference to the MoA at 40 CFR part 62 subpart EE, thus satisfying the procedural requirements outlined in EPA's Delegation Manual.²

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a state plan submission that complies with the provisions of the CAA section 111(d) and 129(b)(2) and applicable Federal regulations. 42 U.S.C. 7411(d) and 7429(b)(2); 40 CFR 62.02(a). Thus, in reviewing state plan submissions, EPA's role is to approve state choices, provided that they meet the

² Section 7-139 of the EPA's Delegation Manual is entitled "Implementation and Enforcement of 111(d)(2) and 111(d)/129(b)(3) Federal Plans" and the reader may refer to it in the docket for this rulemaking at www.regulations.gov (see Docket ID Number EPA-R01-OAR-2018-0069).

criteria of the CAA. Accordingly, this action merely approves a state delegation request as meeting Federal requirements and does not impose additional requirements beyond those already imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- This action is not expected to be an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking does not apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Waste treatment and disposal.

Dated: June 18, 2018.

Alexandra Dunn,
Regional Administrator,
EPA Region 1.

Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 62—APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart EE—New Hampshire

2. Add an undesignated center heading and § 62.7465 to subpart EE to read as follows:

Air Emissions from Existing Sewage Sludge Incineration Units

§ 62.7465 Identification of plan—delegation of authority.

(a) Letter from the New Hampshire Department of Environmental Services (NH DES), submitted November 14, 2017, requested delegation of authority from the EPA to implement and enforce the Federal Plan Requirements for Sewage Sludge Incineration Units Constructed on or before October 14, 2010 (SSI Federal Plan). The SSI Federal Plan will be administered by both the NH DES and the EPA pursuant to 40 CFR part 62 subpart LLL.

(b) *Identification of sources.* The SSI Federal Plan applies to owners or operators of existing facilities that meet all three of the following criteria:

- (1) The SSI unit(s) commenced construction on or before October 14, 2010;
- (2) The SSI unit(s) meets the definition of an SSI unit as defined in § 62.16045; and
- (3) The SSI unit(s) is not exempt under § 62.15860.

(c) On December 18, 2017 Mr. Robert R. Scott, Commissioner of NH DES, signed the Memorandum of Agreement (MoA) which defines the policies, responsibilities, and procedures by which the SSI Federal Plan will be administered. On December 22, 2017, Mr. Ken Moraff, as Acting Regional Administrator of EPA Region 1, signed the MoA.

(d) The delegation is fully effective as of December 22, 2017.

[FR Doc. 2018-13552 Filed: 6/22/2018 8:45 am; Publication Date: 6/25/2018]